IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22-3-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ petition No.35988 of 2004

W.P.M.P.No.40085 of 2005

E.Natarajan ... Petitioner

Vs.

1. The State of Tamil Nadu
rep.by the Commissioner and
Secretary to Govt.,
Home Department,
Chennai.

2. The Inspector General of Police,
Armed Reserve,
Chennai-10.

3. The Commandant,
T.S.P.VIII Battallion,
New Delhi-64.

4. The Commandant,
Tamil Nadu Special Police,
VIII Battallion,
Veerapuram,
Chennai-55. ... Respondents

This Writ petition is filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for all the records pertaining to passing of order dated 6.2.2004 in proceedings C.No.D3/LR.77/02.BO.127/04 on the file of the Commandant, T.S.P.Battallion VIII, New Delhi-64, quash the same and consequently direct the respondents to reinstate the petitioner in service in any one of the suitable jobs with arrears of salary and other benefits.

For Petitioner : Mr.G.Justin

For Respondents : Mrs.D.Malarvizhi,
Government Advocate

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O R D E R

In this writ petition, petitioner seeks to quash the order of the third respondent dated 6.2.2004 and reinstate him in service in anyone of the suitable post with arrears of salary and other benefits.

2. The brief facts necessary for disposal of the writ petition are as follows.

(a) Petitioner was working as Havildar Jeep Driver at the Office of the Commandant, VIII Battallion, Veerapuram, Chennai-55. On 19.1.1994, at 18.10 hours, while the petitioner was discharging his duties, one hand pistol belonging to the Commandant was left behind the driver's seat of the Jeep and one Arulnathan took the same to be handed over to Gandhirajan, I.P.S. Petitioner was standing near one Shanmugam, HIV (No.820). The hand pistol accidentally got triggered by Arulnathan, which resulted in multiple injuries to the petitioner and he became unconscious. Petitioner was rushed to the General Hospital for treatment and he was treated there as inpatient from 19.1.1994 to 24.1.1994. Thereafter, petitioner was shifted to the Christian Medical College Hospital, Vellore and petitioner took treatment there for eleven months and thereafter he was discharged.

(b) It is stated in the affidavit that an FIR was registered by the Inspector of Police, F-2 Tank Factory Police Station, Chennai-54 against the said Arulnathan for his act of negligence and he was placed under suspension by the department. The said suspension order was challenged by Arulnathan before the Tamil Nadu Administrative Tribunal and the Tribunal allowed the application and permitted the said Arulnathan to continue in service. The departmental action initiated against Gandhirajan, I.P.S., was subsequently dropped.

(c) Due to the injury sustained by the petitioner, he was unable to walk without any support as both his legs were totally crippled. Petitioner was able to move only with the support of somebody and the said position improved subsequently and the petitioner is now able to attend to his day-to-day works and also able to sit in the chair and walk slowly. According to the petitioner, there is still a bullet in his spinal cord, which has to be extricated by a minute operation. The said operation could be conducted only in Apollo Hospital, Chennai, for which petitioner has no sufficient funds. According to the petitioner, he filed W.P.No.11368 of 2001 claiming compensation of Rs.20.00 lakhs and the writ petition is admitted and pending.

(d) Petitioner's medical leave was sanctioned from time to time and finally petitioner was referred to the Medical Board constituted by the Vellore Government Medical College Hospital. Petitioner appeared before the Medical Board on 22.10.2003 and the Doctors, who examined the petitioner recommended that the petitioner is unfit to hold the post of Police Constable. Based on the said recommendations of the Medical Board, petitioner was medically invalidated with effect from 22.10.2003 by order dated 6.2.2004 and ultimately petitioner's name was struck off from the strength with effect from 22.10.2003 of TSP VIII Battallion, New Delhi.

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(e) Subsequently petitioner submitted a representation before the first respondent on 19.9.2004 and prayed for alternative employment, for which no reply was given by the first respondent till date. Hence the petitioner filed the present writ petition challenging the order of medical invalidation dated 6.2.2004.

3. The writ petition was admitted on 8.12.2004 and notice was ordered to the respondents. In spite of service of notice on the respondents, no counter affidavit was filed.

4. The learned counsel for the petitioner argued that the Medical Board gave opinion to the effect that the petitioner is medically unfit only to perform the duties of a Police Constable and therefore the petitioner ought to have been given an alternative post. Learned counsel further argued that the impugned order giving retrospective medical invalidation is totally erroneous and unsustainable and it is contrary to Rule 36 of the Tamil Nadu Pension Rules. It is further argued that the impugned order is in violation to Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It is also in violation of Article 21 of Constitution of India.

5. The learned Government Advocate argued that in view of the report submitted by the Medical Board, petitioner was invalidated and there is no illegality in the impugned orders and the same do not call for any interference.

6. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned Government Advocate.

7.(a) In the decision reported in 2003 (2) Supreme 102 (Kunal Singh v. Union of India & Another) the Honourable Supreme Court held that if a person has acquired disability by injury during his service and if not found suitable for the post of constable he was holding, he should be shifted to some other post with same pay-scale and service benefits but he cannot be invalidated on this ground from service. The Court further held that Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, casts a statutory obligation on the employer to protect an employee acquiring disability during service. Paragraph 9 of the judgment is relevant and the same is extracted hereunder,

> "9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are

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given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

(b) A Division Bench of this Court in the decision reported in 2004 WLR 398 (Metropolitan Transport Corporation v. The Presiding Officer, Principal Labour Court & Another) upheld the order of the learned single Judge, cancelling the order of medical invalidation. In paragraphs 5 to 7 of the Judgment the Division Bench held as under,

"5. Counsel for the appellant sought to rely on a Government Order of the year 1981 which directs that the persons who are found medically unfit to continue to work on account of inter alia, of disability acquired during the course of employment should be treated only as a fresh recruits. It was therefore, claimed that the Government Order should be allowed to be implemented and the employees be treated as a fresh recruit.

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6. We see no substance in this contention. That Government Order on which reliance was placed was made at a time when Parliament had not legislated with reference to persons who suffer from disabilities. Parliament having taken note of the plight of the disabled - either born disabled or those who acquired it later, has legislated a special enactment for their benefit - "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995".

7. That Act was enacted in the year 1995. Most of the agencies of the Government as also public at large appear to have remained quite ignorant of it's beneficial provisions and not enough care has been taken by those concerned to ensure the benefits conferred by that Act are in fact extended to those entitled thereto."

(c) In an another Division Bench decision reported in 2005 (2) L.W 565 (Metropolitan Transport Corporation Ltd., Chennai-2 v. K.Ravichandran), this Court held that the language of section 3(1) of the Workmen's Compensation Act is different from that of section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In paragraphs 9 and 10, the Division Bench held thus,

"9. Thus, the language of Section 3(1) of the Workmen's Compensation Act is very different from that of Section 47(1) of the 1995 Act. We cannot import notions of the Workmen's Compensation Act, 1923 into the 1995 Act which is a totally different Act.

10. It may be mentioned that the 1995 Act is a piece of welfare legislation and hence it has to be liberally construed giving a purposive interpretation. The object of the Act obviously is to fulfill the mandate of the Diretive Principles of State Policy in Part IV of the Constitution. Hence full effect must be given to this objective. In our opinion, the words "who acquires a disability during his service" means that the disability should be acquired while in employment, and it is not necessary that it should be acquired while performing his work. It is also not necessary that the employment should be the cause of disability."

(d) This Court in 2006 (1) CTC 124 (P.Thangamarimuthu v. Tamil Nadu State Transport Corporation, Madurai (Division-I)) quashed a similar medical invalidation order passed against a Conductor of the Tamil Nadu State Transport Corporation by applying the provisions contained in Section 47 of the Act and held that it is a beneficial legislation passed in favour of the disabled persons and the same cannot be narrowly interpreted.

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8. Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 reads as under,

> "Section 47. Non-discrimination in Government employment.- (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:
>
> Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits.
>
> Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.
>
> (2) No promotion shall be denied to a person merely on the ground of his disability:
>
> Provided that the appropriate government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

A bare reading of the above section clearly mandates the department to accommodate the disabled employee either by retaining him in the said post or shifting to some other post with same scale of pay and service benefits and if alternate suitable post is not available, the concerned employee shall be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier, and he shall not be denied promotion merely on the ground of his disability. As per the proviso the appropriate Government may issue notification specifying certain conditions and exempting any establishment from the provisions of the section.

9. In this case, admittedly no Government notification is issued to contend that the beneficial provision under Section 47 of the 1995 Act is not applicable to the Police Department. The case considered by the Honourable Supreme Court in the decision reported in 2003 (2) Supreme 102 (cited supra) deals with the service of a Constable of Special Service Bureau and in the said case the Supreme Court granted relief to the Constable, which is also a disciplined force. Therefore, the impugned order passed by the respondents are totally in violation of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and against the decisions referred above. Similar view was taken by me in an earlier order dated 16.2.2006 in W.P.No.27016 of 2005 (S.Rajendran v. The Deputy Commissioner of Police, Madurai and Another), wherein a similar order of termination was set aside and the petitioner therein was directed to be reinstated in service with all backwages. The facts in the said case is almost identical to the facts of the case on hand.

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10. As rightly contended by the learned counsel for the petitioner, the impugned order is also unsustainable in view of the retrospective invalidation order, passed by the third respondent. It is unfortunate that the petitioner, who was not negligent in his duties, sustained injuries due to the negligence of another person and made to suffer physically also. Instead of giving encouragement and alternative employment to him, the respondents have chosen to invalidate the petitioner on medical grounds and the same is totally unsustainable and unjust, particularly in the facts and circumstances of this case.

11. Therefore I am of the view that the impugned order is unsustainable and the same is liable to be set aside and accordingly set aside. The petitioner shall be provided with alternative employment in the department within a period of two weeks from the date of receipt of copy of this order. Petitioner is entitled to all backwages, continuity of service and also promotion, if any due to him. The backwages shall be calculated and paid to the petitioner within a period of four weeks time from the date of his joining duty in the new post.

The writ petition is allowed with the above directions. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

vr

To

1. The Commissioner and Secretary to Govt.,
   State of Tamil Nadu,
   Home Department, Chennai.

2. The Inspector General of Police,
   Armed Reserve, Chennai-10.

3. The Commandant, T.S.P.VIII Battallion, New Delhi-64.

4. The Commandant, Tamil Nadu Special Police,
   VIII Battallion, Veerapuram, Chennai-55.

+ 1 CC to Mr. G.Justin, Advocate SR NO 14767

W.P.No.35988 of 2004
Dated : 22-3-2006

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